

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

RECEIVED AND FILED
2002 JUL 24 AM 9:20
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

R&G ENGINEERING, INC., et al.,

Plaintiffs,

v.

CIVIL NO. 98-1760 (RLA)

TRANSCONTAINER TRANSPORT, INC.,

Defendant.

ORDER DISMISSING THE COMPLAINT AS TIME-BARRED

This action was initially filed in the local court by plaintiffs, R&G ENGINEERING, INC. ("R&G") and JERVIS ENTERPRISES ("JERVIS"), against TRANSCONTAINER TRANSPORT, INC. ("TRANSCONTAINER") and GREAT AMERICAN INSURANCE COMPANY ("GAICO") for collection of monies. Subsequently, plaintiffs conceded they had no valid claim against GAICO and stipulated to its dismissal.¹ TRANSCONTAINER, the sole remaining defendant, has moved the court to dismiss the complaint as time-barred.

BACKGROUND

Plaintiffs are corporations primarily engaged in the business of selling electrical equipment and associated services to other companies. TRANSCONTAINER is a freight forwarding company engaged in

¹ See Stipulation for the Entry of Partial Judgment of Dismissal, filed on May 5, 1999 (docket No. 23) and Order of approval, filed on May 24, 1999 (docket No. 24).

s/csky

s/cs:to (3)
attys/pts
in ICMS

48

1 CIVIL NO. 98-1760 (RLA)

Page 2

2
3 the business of maritime transportation and **GAICO** is an insurance
4 company which had issued a marine insurance policy on plaintiffs'
5 cargo. **TRANSCONTAINER** handled the arrangements for the
6 transportation of said cargo.

7 In essence, the complaint claims that in March 1993, **R&G**
8 retained **TRANSCONTAINER** to arrange for the transport of a large
9 electric transformer from the United States to the Dominican
10 Republic. **R&G** further requested that **TRANSCONTAINER** make
11 arrangements to insure the shipment of the transformer which
12 **TRANSCONTAINER** complied with under its Marine Open Cargo Policy with
13 **GAICO**. At the time the transformer was being unloaded at the pier in
14 the Dominican Republic, it was dropped and damaged.

15 Plaintiffs claim that in 1994 **GAICO** paid **TRANSCONTAINER** the
16 insurance claim proceeds for the damages to the transformer but that
17 **TRANSCONTAINER** improperly retained these monies thereby defrauding
18 plaintiffs.

19 The court having reviewed defendant's request for summary
20 judgement as well as plaintiffs' opposition thereto hereby finds as
21 follows:

22 SUMMARY JUDGMENT

23 Federal courts will grant summary judgment where "the pleadings,
24 depositions, answers to interrogatories, and admissions on file,
25 together with the affidavits, if any, show that there is no genuine
26 issue as to any material fact and that the moving party is entitled

1 CIVIL NO. 98-1760 (RLA)

Page 3

2 to judgment as a matter of law". Rule 56(c) Fed. R. Civ. P. The
3 First Circuit Court of appeals has reiterated that the function of
4 summary judgment is "to pierce the boilerplate of the pleadings and
5 assay the parties' proof in order to determine whether trial is
6 actually required." Cortés Irizarry v. Corporación Insular, 111 F.3d
7 184, 187 (1st Cir. 1997) (citing Wynne v. Tufts Univ. Sch. of Med.,
8 976 f.2d 791, 794 (1st Cir. 1992)); Vega Rodriguez v. P.R.T.C., 110
9 F.3d 174, 178 (1st Cir. 1997).

10 "To defeat a motion for summary judgment, the nonmoving party
11 must demonstrate the existence of a trialworthy issue as to some
12 material fact." Cortés Irizarry, 111 F.3d at 187. Further, "[a]
13 genuine issue of fact exists only if a reasonable jury could resolve
14 it in favor of either party." Basic Controlex Corp. v. Klockner
15 Moeller Corp. 202 F.3d 450, 453 (1st Cir. 2000).

16 The court is required to "constru[e] the record in the light
17 most favorable to the nonmovant and resolving all reasonable
18 inferences in that party's favor." Carmona v. Toledo, 215 F.3d 124,
19 131 (1st Cir. 2000); Cortés-Irizarry, 111 F.3d at 187.

20 A party moving for summary judgment must not only show that
21 there is "no genuine issue of material facts", but also that he is
22 "entitled to judgment as a matter of law." Vega-Rodriguez, 110 F.
23 3d. at 17. "A fact is 'material' if it potentially could affect the
24 suit's outcome... [and is] 'genuine' if a reasonable factfinder,
25 examining the evidence and drawing all reasonable inferences helpful
26

1 CIVIL NO. 98-1760 (RLA)

Page 4

2
3 to the party resisting summary judgment, could resolve the dispute
4 in that party's favor". Cortes at 187 (citations omitted).

5 It is axiomatic that when a summary judgment motion is supported
6 with affidavits or other materials, the non-moving party cannot
7 respond with mere allegations and denials. Instead, the non-moving
8 party must show, also by affidavits, depositions, testimonies or
9 otherwise, that a genuine issue of facts remains for trial.

10 Mitchelson v. Digital Fin. Serv., 167 F.3d 715, 720 (1st Cir. 1999).

11 In order to be considered, the facts contained in the documents and
12 the materials attached to the motion for summary judgment as well as
13 to the opposition must be admissible or usable at trial. Carmona v.
14 Toledo, 215 F.3d at 131.

15 In the case at hand, defendant submitted along with its motion
16 for summary judgment and in accordance with the provisions of Local
17 Rule 311.12, a statement carefully enumerating twenty (20)
18 uncontested facts properly supported by specific references to the
19 record. Plaintiffs' opposition, however, fails to address
20 **TRANSCONTAINER's** Statement of Uncontested Facts, as required by the
21 Local Rules. Instead, plaintiffs offered their own version of
22 Uncontested Facts, which purport to list twenty-one (21) material
23 facts not in dispute. Of these twenty-one "facts", thirteen (13)
24 have no reference whatsoever to the record as mandated by Local Rule
25 311.12 and the remaining eight (8) are neither genuine, nor material
26 to the issues before the court as set forth in defendant's Motion for

Summary Judgment. Simply stated, plaintiffs do not dispute the facts as presented by defendant.

Strict compliance with the terms of Local Rule 311.12 has been endorsed by the Court of Appeals which has admonished that "parties ignore them at their peril," Ruiz Rivera v. Riley, 209 F.3d 24, 28 (1st Cir. 2000) and that "non-compliance with such a rule, as manifested by a failure to present a statement of disputed facts, embroidered with specific citations to the record, justifies deeming the facts presented in the movant's statement of undisputed facts admitted." *Id.*; accord Corrada Betances v. Sea-Land Serv., Inc., 248 F.3d 40, 43 (1st Cir. 2001); Morales v. A.C. Orssleffs EFTF, 246 F.3d 32, 33 (1st Cir. 2001).

Under these circumstances, it is clear that plaintiffs have failed to abide by the specific directive of Local Rule 311.12 as well as with the prevailing case law. Plaintiffs failed to point to any factual issues buttressed by record citations. In view of the above, we give complete credence to defendant's Statement of Uncontested Facts.

UNCONTESTED FACTS

The following are the uncontested facts as submitted by defendant in its motion:

Plaintiff **R&G** is incorporated in Puerto Rico, home-based in Santurce, Puerto Rico, and is in the business of representing different manufacturers associated with the electrical industry.

1 CIVIL NO. 98-1760 (RLA)

Page 6

2
3 (Defendant's Statement of Uncontested Facts No. 1, Motion for Summary
4 Judgment, Exh. 1 of Defendant's Memorandum of Law, at pages 6, 9 and
5 10.).

6 Plaintiff **JERVIS**, a corporation with its principal offices in
7 the Dominican Republic, is primarily in the business of selling
8 electrical equipment to the Dominican power company, as well as to
9 other companies. (Exh. 1 of Defendant's Motion for Summary Judgment,
10 pp. 19, 20 and 21).

11 MR. JOSÉ IGNACIO ACERO is one of the owners of **JERVIS** (Motion
12 for Summary Judgment, Exh. 1, pp. 19, 20, 21) and another company in
13 the Dominican Republic by the name of **METALEX**. (Exh. 1 of
14 Defendant's Motion for Summary Judgment, p. 23).

15 **TRANSCONTAINER** is a freight-forwarding corporation, which has
16 been in business since 1978 and is engaged primarily in maritime
17 transport, with principal offices in New York. (See Complaint ¶ 3;
18 PETER JORDI, Affidavit in Support of Defendant's Motion for Summary
19 Judgment, attached as Exh. 3, ¶ 2).

20 During 1993 and 1994, **TRANSCONTAINER** was retained by R&G
21 Engineering to transport a number of shipments of power equipment and
22 supplies from various points in the United States to the Dominican
23 Republic. (JORDI Affidavit, Motion for Summary Judgment, Exh. 3, ¶
24 2).

25 Some time prior to the month of August 1993, **R&G** purchased a
26 Westinghouse 200 MVA/electric transformer in the United States and

CIVIL NO. 98-1760 (RLA)

Page 7

sold it to **JERVIS**, who in turn then sold it to the ultimate consumer, the Dominican power plant. (Complaint, Exh. 2, ¶¶ 6 and 7; Motion for Summary Judgment, Exh. 1, pp. 24-28).

As a consequence of the above, **TRANSCONTAINER** was retained by **R&G** to make the arrangement for the ocean and inland transportation of said equipment from Houston, Texas, to the Dominican Republic. **R&G** further requested that **TRANSCONTAINER** make arrangements to insure the shipment of the electric transformer and **TRANSCONTAINER** did, in fact, do so, under its Marine Open Cargo Policy with **GAICO**. (Complaint, Exh. 2, ¶ 8; Motion for Summary Judgment, Exh. 1, p. 25).

On or about August 8, 1993, while the transformer was being unloaded from the vessel to the pier it was dropped and damaged. (Complaint, Exh. 2, ¶ 3; Motion for Summary Judgment, Exh. 3, ¶ 3). As a result of the damage to the transformer, **TRANSCONTAINER**, the assured under the Marine Open Cargo Policy with **GAICO**, filed the appropriate claim with the insurer. (Motion for Summary Judgment, Exh. 3, ¶ 3; Complaint, Exh. 2, ¶13).

On August 18, 1993, **R&G** was specifically notified as to the (1) identity of the insurance carrier, (2) the number of the claim, (3) the contact person within **GAICO** and (4) the telephone number of the person. (Complaint, Exh. 2, ¶ 13; see also facsimile communication from **TRANSCONTAINER** to **R&G** dated August 18, 1993, attached as Exh. 4 of Motion for Summary Judgment).

CIVIL NO. 98-1760 (RLA)

Page 8

On or about June 23, 1994, **GAICO** made a payment under the policy to **TRANSCONTAINER** with respect to the previously mentioned damaged transformer in the amount of \$120,000.00. (Complaint, Exh. 2, ¶ 16; Motion for Summary Judgment, Exh. 3, ¶¶ 2, 3). Defendant admits that it retained the insurance proceeds from the settlement of the claim for the damaged transformer as a set off against obligations owed to it by **R&G** for various freight forwarding and related services to **R&G**. (Motion for Summary Judgment, Exh. 3, ¶ 3; Complaint, Exh. 2, ¶ 16).

MR. JOSE IGNACIO ACERO, the owner of plaintiff **JERVIS**, was the person selected by **R&G** and **JERVIS** to prepare the claim and follow-up on the insurance payment for the damaged transformer. (Motion for Summary Judgment, Exh. 1, pp. 100-102, 107, 108). Accordingly, through copy of a fax dated July 12, 1994, addressed to FREDERICK SCHAD, MR. ACERO, of **JERVIS**, was notified at the METALEX address that **GAICO** had paid the insurance proceeds directly to **TRANSCONTAINER**. (Complaint, Exh. 2, ¶ 19; Motion for Summary Judgment, Exh. 1, pp. 110, 111; also see, July 12, 1994 facsimile communication to FREDERICK SCHAD, attached as Exh. 6 of Motion for Summary Judgment).

Some time later that same year, 1994, MR. ACERO of **JERVIS**, advised MR. CAMINO of **R&G** that **GAICO** had already paid **TRANSCONTAINER** for the insurance claim. (Motion for Summary Judgment, Exh. 1, pp. 112-115). On August 7, 1994, MR. PETER MACK, on behalf of **TRANSCONTAINER**, sent a fax to MR. CAMINO of **R&G**, requesting that MR. CAMINO call MR. PETER JORDI to discuss the insurance settlement.

CIVIL NO. 98-1760 (RLA)

Page 9

(Motion for Summary Judgment, Exh. 3, ¶ 4; also see August 7, 1994 facsimile communication, attached as Exh. 7 of Motion for Summary Judgment).

After the **TRANSCONTAINER** fax of August 7, 1994, there was no further communication between the parties, either in writing or verbally, concerning the \$120,000.00 proceeds of the insurance settlement and/or the outstanding obligations owed to **TRANSCONTAINER** by **R&G** until on or about late June or early July of 1998, when **R&G** served **TRANSCONTAINER** with a summons and complaint in this action. (Motion for Summary Judgment, Exh. 3, ¶¶ 4, 6, 7, and also Exh. 1, pp. 106-110).

At the time **TRANSCONTAINER** was served with the summons and complaint in this action in mid-1998, it had not heard from **R&G** for years; nor had it any advance notice that **R&G** was objecting to **TRANSCONTAINER's** retention of the insurance proceeds or that **R&G** was contemplating litigation. Moreover, **TRANSCONTAINER** had already disposed of its files relating to transactions from 1993 and at least the first several months of 1994, because of a shortage of storage space. The discarded files included **TRANSCONTAINER's** files for all of its business, not just its dealings with **R&G**. For that reason, **TRANSCONTAINER** no longer has most of the records, such as bills of lading, vendor invoices, faxes, etc., that would provide back-up documentation for the services reflected in four (4) of the six unpaid invoices. The exceptions are two invoices, which were not

sent to R&G until October 1994. At the time this lawsuit was commenced, TRANSCONTAINER had not yet discarded files covering the last part of 1994. Consequently, it still has its supporting records for the last two unpaid invoices. (Motion for Summary Judgment, Exh. 3, ¶ 7).

APPLICABLE STATUTE OF LIMITATIONS

(1) Conversion Doctrine

Defendant argues that plaintiffs' claim is a tort action for conversion of maritime insurance proceeds and is therefore, time-barred by the one-year limitations period provided in Art. 1868 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5298 (1990). In support thereof, TRANSCONTAINER points to the decision issued in Barreto Peat, Inc. v. Luis Ayala Colón Sucrs., Inc., 709 F. Supp. 321 (D.P.R. 1989), aff'd 896 F.2d 656 (1st Cir. 1990).

Plaintiffs, on the other hand, contend that their action is one for damages arising from a breach of contract and therefore, the applicable limitations period is the fifteen-year term for *contractu* claims under Art. 1864 of the Civil Code of Puerto Rico, P.R. Laws Ann. tit., 31 § 5294 (1990).

Conversion is a form of intentional fault governed by Art. 1802 of the Puerto Rico Civil Code, Laws of P.R. Ann. tit., 31 § 5141 (1990) which provides that a person who causes damage to another through fault or negligence is liable in damages. Tort actions have a one-year statute of limitations, which commences to run on the date

1 CIVIL NO. 98-1760 (RLA)

Page 11

2 the aggrieved party had knowledge of the tort. Art. 1868 of the
3 Puerto Rico Civil Code, Laws of P.R. Ann. tit., 31 § 5298 (1990).

4 In Barreto Peat, plaintiff claimed that defendant illegally
5 exercised or assumed authority over his property, thereby depriving
6 plaintiff of its use. After analyzing plaintiffs' allegations, the
7 court concluded that they gave rise to a finding of conversion.
8 Therefore, reference to plaintiffs' allegations is essential in order
9 to ascertain whether the conversion doctrine is applicable to the
10 instant case. The court, in Barreto Peat analyzed the conversion
11 doctrine pursuant to the case law of the Supreme Court of Puerto
12 Rico. In pertinent part the court held:

13 The Supreme Court of Puerto Rico has defined
14 conversion as "not the simple acquisition of
15 another's property, but the malicious and
16 wrongful privation of the ownership rights, the
17 illegal exercise, or the assumption of authority
18 over another's property, thereby depriving the
19 lawful owner or possessor, permanently or for an
20 indefinite period, of its use and employment".

21 (citations omitted)

22 *Id.*, 709 F.Supp. at 323.

23 The complaint alleges as follows:

24 Defendant's actions constitute a fraudulent
25 act in prejudice of the plaintiffs, upon
26

1 CIVIL NO. 98-1760 (RLA)

Page 12

2
3 refusing to make payment, alleging that they
4 made payment without the plaintiff having
5 recovered its loss. Both parties acted with a
6 mutual and common agreement to defraud, in
7 violation of the insurance contract, with
8 prejudice to plaintiff, and they are jointly and
9 severally liable for the payment in addition to
10 interest".

11 Complaint ¶ 20, Exh. 2 of Motion for Summary Judgment.

12 Likewise, in the Initial Scheduling Conference Memorandum,
13 plaintiffs alleged as follows:

14 Transcontainer fraudulently appropriated the
15 insurance funds without ever notifying the
16 insured that the proceeds had been paid.

17 Initial Scheduling Conference Memorandum page 3 (docket No. 19).

18 Plaintiffs, herein, contend that defendant fraudulently retained
19 the insurance proceeds without ever notifying the insured that said
20 monies had been paid by **GAICO** and that these actions constitute fraud
21 against plaintiffs. The court agrees with defendant that these
22 allegations fit squarely within the definition of conversion provided
23 by the Puerto Rico Supreme Court in Hull Dobbs Co. v. Superior
24 Court, 81 P.R.R. 214, 222 (1959) and Heirs of Sorbá v. Viñas, 49
25 P.R.R. 31 (1935).
26

1 CIVIL NO. 98-1760 (RLA)

Page 13

2

3

4

5

6

7

Therefore, we conclude that the one-year statute of limitation provided in Art. 1868 of the Puerto Rico Civil Code governs plaintiffs' cause of action. We must now, therefore, determine when the cause of action accrued in order to decide whether or not it is timely.

8

9

10

11

12

13

14

15

16

17

It is undisputed that by July 12, 1994 plaintiffs knew that **TRANSCONTAINER** had received the insurance proceeds for the damaged cargo in question. Further, not only were plaintiffs aware of defendant's receipt of the insurance proceeds by this time but they also failed to take any action in response to defendant's August 7, 1994 written notice, requesting that **R&G** contact **TRANSCONTAINER** to resolve the insurance payment issue. Despite this knowledge and invitation it is not until April 22, 1998, that is approximately four (4) years later, that plaintiffs for the first time claim that **TRANSCONTAINER** fraudulently retained the insurance proceeds.

18

19

20

Thus, the undisputed facts of the instant case can lead to only one inescapable conclusion: the complaint for fraudulent conversion is time-barred and should be dismissed.

21

(2) COGSA

22

23

24

25

26

As an alternative ground for dismissal, **TRANSCONTAINER** contends that this action is also time-barred under the limitations period provided by Section 1303(6) of the United States Carriage of Goods by Sea Act, 46 U.S.C. App. 1303(6) ("COGSA").

1 CIVIL NO. 98-1760 (RLA)

Page 14

2
3 Plaintiffs, on the other hand, contend that COGSA is not
4 applicable because **TRANSCONTAINER** retained the insurance proceeds not
5 due to claims related to the cargo in controversy - the shipment of
6 the Westinghouse 200 MVA/electric transformer - but to other
7 unrelated shipments. According to plaintiffs' theory, COGSA'S
8 limitations against claims or suits are strictly limited to the
9 parties' relationship under the specific cargo contract. Plaintiffs
10 reason that since their claim derives from **TRANSCONTAINER**'s
11 determination to keep the insurance proceeds and not from the terms
12 of the cargo contract, COGSA is not inapposite to the instant case.
13 Plaintiffs further argue that COGSA's application ceased upon payment
14 of the insurance claim for the damages suffered by the goods.

15 Plaintiffs' arguments are clearly inconsistent. On the one
16 hand, they allege that the doctrine of conversion is not applicable
17 because their cause of action against **TRANSCONTAINER** is based on
18 contract, not on tort. However, plaintiffs did not articulate nor
19 specify which contractual obligation was breached by defendant. At
20 the same time, plaintiffs argue that COGSA is not applicable because
21 their claim derives from defendant's decision to retain the insurance
22 proceeds, and not from the cargo contract. (Plaintiffs' Opposition,
23 page 7). As well noted by defendant, either **TRANSCONTAINER** breached
24 the existing agreement between the parties, i.e., the cargo contract,
25 or the decision to retain and/or convert the insurance proceeds came
26 after said contract had been fully executed.

1 CIVIL NO. 98-1760 (RLA)

Page 15

2
3 COGSA applies to shipments between the United States and a
4 foreign port. 46 U.S. App. § 1312; Barreto Peat, 709 F. Supp. at
5 324. Plaintiffs admit that they contracted **TRANSCONTAINER** for the
6 transportation of a transformer by sea from the city of Houston,
7 Texas, to the Dominican Republic. (Complaint ¶ 8). Further,
8 plaintiffs affirmatively allege that on August 8, 1993 said
9 transformer suffered severe damage while it was in the custody and,
10 therefore, the responsibility of **TRANSCONTAINER**. (Complaint, ¶ 11).
11 Since the shipment in this case was for the carriage of goods between
12 the United States (Houston) and a foreign port (Dominican Republic),
13 COGSA applies by its own terms, 46 U.S.C. App. § 1312). Therefore,
14 Plaintiffs are precluded from circumventing the application of COGSA
15 by couching their complaint in terms of breach of contract. Barreto,
16 896 F. 2d. at 661.

17 COGSA imposes a one-year statute of limitations on suits against
18 the carrier and its agents. To that effect, Section 1303(6) provides
19 in the pertinent part as follows:

20 In any event the carrier and the ship shall
21 be discharged from all liability in respect of
22 loss or damage unless suit is brought within
23 one-year after delivery of the goods or the date
24 when the goods should have been delivered.

25 See also Insurance Co. of North America v. Puerto Rico Marine, 768
26 F. 2d. 470 (1st Cir. 1985).

1 CIVIL NO. 98-1760 (RLA)

Page 16

2
3 In this case the goods were delivered in the Dominican Republic
4 in **August, 1993**. Plaintiffs did not file this action until **April 22,**
5 **1998**. Inasmuch as the complaint was not brought within one-year
6 after delivery of the goods or the date in which the goods should
7 have been delivered, pursuant to the provisions of 46 U.S.C. App. §
8 1303(6), plaintiffs' action is time-barred.

9
10 (3) Puerto Rico Commerce Code

11 As a third ground for dismissal defendant contends that
12 plaintiffs' action is also barred under the statute of limitations
13 set forth in the Puerto Rico Commerce Code, Laws of P.R. Ann. tit.,
14 10 § 1910 (1997). In their Opposition plaintiffs did not address this
15 particular argument.

16 The Puerto Rico Commerce Code applies when a party engages in a
17 commercial or mercantile transaction. The Commerce Code indicates
18 that a purchase and sale is commercial when a party buys goods to be
19 resold for the purpose of deriving a profit in the resale. Art. 243
20 of the Commerce Code, Laws of P.R. Ann. tit., 10 § 1701. The Commerce
21 Code applies even if those that executed the actions are normally not
22 engaged in mercantile transactions. See Laws of P.R. Ann. tit., 10
23 § 1002.

24 In the instant case, plaintiff **R&G** bought the generator in
25 question and sold it to **JERVIS** with the intention of making a profit.
26 **JERVIS**, in turn, purchased the transformer and sold it to the end
consumer, the Dominican electrical plant. **TRANSCONTAINER**, who is in

1 CIVIL NO. 98-1760 (RLA)

Page 17

2
3 the business of maritime transportation for profit, was contracted to
4 transport and insure the generator. Obviously, all these acts are
5 commercial transactions within the definition of the Puerto Rico
6 Commerce Code.

7 The Commerce Code of Puerto Rico provides for a one-year
8 limitations period for actions related to the delivery of cargo in
9 maritime or land transportation. Specifically, Art. 948, P.R. Laws
10 Ann. tit., 10 § 1910(2) reads:

11 The following shall prescribe in one year:

12

13 (2) Actions relating to the delivery of
14 the cargo in maritime or land transportation or
15 to indemnity for delays and damages suffered by
16 the goods transported, the period of
17 prescription shall begin to be counted from the
18 day of the delivery of the cargo at the place of
19 its destination, or from the day on which it
20 should have been delivered according to the
21 conditions of its transportation.

22 The Commerce Code also sets forth a one-year statute of
23 limitations. The period starts to run on the date of delivery of the
24 cargo at the place of destination, or from the date when it should
25 have been delivered. In the instant case the transformer was damaged
26 while being unloaded and delivered on or about August 8, 1993.

1 CIVIL NO. 98-1760 (RLA)

Page 18

2
3 Thus, plaintiffs' claim lapsed on August 8, 1994 and is thus
4 time-barred since the complaint was filed on April 22, 1998.

5 (4) Laches

6 Lastly, TRANSCONTAINER asserts that plaintiffs' cause of action
7 is also time-barred under the doctrine of laches. Defendant argues
8 that, in essence, this is a maritime claim filed in a local court
9 under the saving to suitor's clause, 28 U.S.C. § 1333(1). Therefore,
10 the local court was obligated to resolve the case in accordance with
11 federal substantive maritime law unless, in balancing state and
12 federal interests, the court concludes that there is no federal
13 preemption and application of local law will not affect any
14 entrenched principle of maritime law.

15 Plaintiffs, on the other hand, argue that pursuant to Puerto
16 Rico law, laches is inappropriate in ordinary civil cases with
17 specific time limitations periods and that the applicable statute of
18 limitations is fifteen (15) years for breach of contract suits. See
19 Art. 1864 of the Civil Code of Puerto Rico, P.R. Laws Ann. tit., 31
20 § 5294 (1991).

21 In an admiralty action, in the absence of a statutorily fixed
22 limitation period, the doctrine of laches applies. In determining
23 whether a claim is barred by laches, the court will examine whether
24 there was: (1) unreasonable delay, and (2) consequent prejudice to
25 the party against which the suit is brought. Cities Serv. Oil Co. v.
26 Puerto Rico Lighterage Co., 305 F.2d 170, 171 (1st Cir. 1962), cited

1 CIVIL NO. 98-1760 (RLA)

Page 19

2 with approval in Gutierrez v. Waterman Steamship Corp., 373 U.S. 206,
3 215 (1963).

4 In determining whether or not there has been unreasonable delay,
5 the court will look to an analogous statutory period to see if the
6 same has expired. As previously discussed, in actions for conversion
7 the applicable term is one year from the tortious act; under COGSA,
8 the time for filing suit is also one year from the date the goods
9 were delivered or should have been delivered, and likewise, the
10 Commerce Code of Puerto Rico also provides for a prescriptive term of
11 one year from the date the goods were delivered or should have been
12 delivered.

13 Applying any of the three aforementioned statutes and viewing
14 them in the light most favorable to plaintiffs, we must conclude that
15 there was unreasonable delay in the filing of the instant complaint.
16 This action should have been filed at the latest on or before **July**
17 **12, 1995** that is, one year after plaintiffs became aware that
18 **TRANSCONTAINER** had, according to plaintiffs' claim, converted the
19 insurance proceeds. However, it was not until **April 1998** that
20 plaintiffs instituted these proceedings.

21 According to the record this inordinate delay in commencing the
22 litigation as well as plaintiffs' failure to provide any advance
23 notice of its objections to **TRANSCONTAINER's** retention of the
24 insurance proceeds has clearly resulted in prejudice to the defendant
25 since it no longer has the documentation necessary to properly defend
26

1 CIVIL NO. 98-1760 (RLA)

Page 20

2
3 itself in this action. As a matter of fact, plaintiffs themselves
4 have confessed that they also lack substantial documentation relating
5 to the relationship between the parties since it is their practice to
6 discard documentation every five (5) years. (Exh. 1, of the Motion
7 for Summary Judgment, p. 84).

8 The only explanation plaintiffs have attempted to provide for
9 its inordinate delay in filing this claim has been to argue that the
10 instant action is governed by Puerto Rico general contract law and
11 that the statute of limitation is a fifteen (15)-year period set
12 forth in the Puerto Rico Civil Code. However, this argument was
13 squarely rejected in Barreto Peat, Inc. v. Luis Ayala Colón Sucrs.,
14 Inc., 709 F. Supp. 321 (D.P.R. 1989); aff'd 896 F.2d 656 (1st Cir.
15 1990).

16 Therefore, even assuming that the one-year limitations period
17 provided for conversion actions; for claims under COGSA, and for
18 actions related with the delivery of cargo under the Commerce Code
19 were not applicable to the instant case, the Court finds that under
20 the doctrine of laches, there was an unreasonable delay in the filing
21 of the instant complaint, which clearly prejudiced the defendant.

22 CONCLUSION

23 In light of the applicable law and the undisputed facts the
24 court finds that the instant complaint filed on April 22, 1998 is
25 time barred under the doctrines of conversion and laches as well as
26 the provisions of COGSA and the Puerto Rico Commerce Code.

1 CIVIL NO. 98-1760 (RLA)

Page 21

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Accordingly, defendant's Motion for Summary Judgment (docket No.

45)² is GRANTED and the complaint is hereby DISMISSED WITH PREJUDICE.

Judgment shall be entered accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 18th day of July, 2002.



RAYMOND L. ACOSTA
United States District Judge

² See Plaintiffs' Opposition... (docket No. 46) and defendant's Reply... (docket No. 47).